

ENTERED

August 09, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

OTIS D. TALBERT,
Plaintiff,

vs.

BRAD LIVINGSTON, *et al.*,
Defendants.

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CIVIL ACTION H-16-2207

MEMORANDUM AND OPINION

Otis D. Talbert, a former inmate of the Texas Department of Criminal Justice - Correctional Institutions Division (“TDCJ-CID”) sued in July 2016, alleging civil rights violations arising from an excessive use of force. Talbert, representing himself, sued Brad Livingston, Sergeant Jefferson, R.M. Grothen, K. Little, John Doe 1, and John Doe 2.

The threshold issue is whether Talbert’s claims should be dismissed as duplicative of pending litigation. Under 28 U.S.C. § 1915A, federal courts are authorized to review, before docketing, if feasible, or in any event as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. The court must dismiss any part of the complaint that is frivolous, malicious, or fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. A complaint is frivolous if it lacks an arguable basis in law or fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir. 2001)(citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). “A complaint lacks an

arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist.” *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998)(quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997)).

Talbert filed another civil rights complaint on July 19, 2016, Civil Action No. 4:16-2180. Civil Action No. 4:16-2180 and the instant lawsuit name the same defendants and relate to the use of force incident on July 21, 2014. The complaints in both cases are photocopies. Because it duplicates the allegations of Civil Action Number 4:16-2180, a pending federal lawsuit Talbert filed, this action is DISMISSED without prejudice as improvidently filed. 28 U.S.C. § 1915A(b)(1).

SIGNED at Houston, Texas, on August 9, 2016.

A handwritten signature in black ink, appearing to read "Vanessa D. Gilmore", written over a horizontal line.

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE